Supreme Court, U.S.
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UNITED STATES SUPREME COURT

OCTOBER, 1994 TERM

KAREN R. LUNDE,

PETITIONER

vs.

CHARLES M. HELMS, ET AL.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL APPENDIX

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

KAREN R. LUNDE, Plaintiff,	NO. 4-89-CV-80128
vs.	RULINGS AND
CHARLES M. HELMS, Associate Dean for Student Affairs and Curriculum, College of Medicine, University of Iowa; JOHN W. ECKSTEIN, Dean of the College of Medicine, University of Iowa (sic); HUNTER R. RAWLINGS III, President, University of Iowa; JERALD W. DALLAM, Registrar, University of Iowa; and the UNIVERSITY OF IOWA, State of Iowa, Defendants.	SUMMARY JUDGMENT FOR DEFENDANTS

At hearings on May 25, June 3, and July 1, 1993, counsel have presented

oral arguments on several motions fully briefed by the parties: motions for summary judgment in whole or in part; plaintiff's request for jury trial of some issues; and plaintiff's motion to amend this court's order entered on June 3, 1993, that allowed plaintiff to dismiss several claims. The court has also commenced a final pretrial conference and addressed issues presented by plaintiff's proposed jury instructions.

The court now rules on these motions and concludes defendants are entitled to summary judgment on all claims plaintiff now asserts against them. The clerk of court shall enter summary judgment in favor of defendants and against plaintiff, with costs assessed to the plaintiff.

BACKGROUND

Entry of summary judgment simply marks another way station in the travels of these litigants through Iowa's federal and state trial and appellate courts. The odyssey began even before February 16, 1989, when plaintiff's registration as a third-year student in the University of Iowa College of Medicine was cancelled.

Plaintiff's father, her lawyer, first filed a complaint in this court on February 1, 1989, seeking injunctive and declaratory relief against defendants who are the president and other officials of the University of Iowa. At the commencement of a hearing on plaintiff's request for preliminary injunction, she dismissed her complaint without prejudice. On February 15, 1989, she filed a second lawsuit almost identical to the first. This

court held a hearing and denied preliminary injunctive relief. Plaintiff's appeal to the court of appeals was unavailing.

In August of 1989, the court held two evidentiary hearings on the plaintiff's renewed motion for preliminary injunction and defendants' motion to dismiss the complaint as amended. The court denied injunctive relief but also denied the defendants' motion to dismiss on the grounds of abstention and failure to state a claim. This court exercised its discretion not to dismiss based on Younger abstention. Instead the court exercised its discretion

> to stay further proceedings in this court pending the outcome of administrative and State judicial proceedings concerning plaintiff's challenge to her dismissal from medical school.

In the ruling of August 31, 1989, this court made clear that it would lift the

stay and hold further proceedings in this action if the plaintiff demonstrated

> that any administrative and judicial proceedings plainly infringe the constitutional rights or federal statutory rights of the plaintiff in respects that the State judiciary cannot or will not address and remedy.

Order, August 31, 1989. The Court of Appeals for the Eighth Circuit again denied plaintiff's appeal from that decision. See 898 F.2d 1343 (8th Cir. 1990).

The three-volume Appendix filed with the Clerk of the Iowa Supreme Court, as well as other papers in this summary judgment record, adequately elaborate on this background and reflect the extensive administrative and judicial proceedings that followed this court's ruling. Plaintiff

was unsuccessful in obtaining relief on administrative review of the defendants' decision that resulted in her dismissal as a medical student. Plaintiff then filed a civil action in the Iowa District Court for Polk County. That judicial review proceeding resulted in a six-day trial in 1991. Prior to the trial the court rejected plaintiff's contention that due process required that she be allowed an evidentiary hearing at the administrative level. At the conclusion of the trial, the Iowa district court judge, Hon. Robert A. Hutchison, entered a final judgment--entitled "Findings of Fact, Conclusions of Law and Order"--that addressed the merits of all claims and decided all issues adversely to the plaintiff. The termination of her status as a medical

student was upheld. The court explicitly held that plaintiff had not proved her claims that she was terminated by reason of sex discrimination, infringement of First Amendment rights, and denial of equal protection. Plaintiff's motions for new trial, reconsideration, or other appropriate relief were denied. The district court did clarify in its post-trial ruling that petitioner's sex discrimination and First Amendment claims were without factual basis, in part because neither her gender nor her expression had played a role in her dismissal. Plaintiff appealed those rulings, but the Iowa Court of Appeals affirmed the decision of the district court in an unpublished fourteen-page opinion and the Iowa Supreme Court denied plaintiff's

application for further review. Plaintiff's petition for a writ of certiorari in the United States Supreme Court was denied on October 19, 1992.

This court has now lifted its previous stay and explored the entire record to determine whether plaintiff is entitled to trial of any of the issues she now asserts in her amended complaint. For the reasons that follow, this court concludes principles of res judicata bar plaintiff's attempt to obtain relief in this court. She is not entitled to a jury trial or a bench trial.

PRINCIPLES GOVERNING RES JUDICATA AND SUMMARY JUDGMENT

Defendants seek summary judgment on the theory that all claims of the plaintiff in this lawsuit are precluded

because they arise out of the same nucleus of facts as the claims that were litigated in the Iowa administrative and judicial proceedings. Defendants also assert the related theory of issue preclusion, contending that issues fundamental to plaintiff's present theories for recovery were actually litigated in the state court, were necessary to the outcome of the state court proceedings, and were decided against the plaintiff. Defendants contend plaintiff had full and fair opportunity and the incentive to litigate in the prior action all issues of liability now asserted in this action. Claim preclusion and issue preclusion, as separate applications of res judicata, are explained in Lane v. Peterson, 899 F.2d 737, 741 n.3 (8th Cir.), cert. denied, 111 S.Ct. 74 (1990).

These principles have long been applied by Iowa courts and the Court of Appeals for the Eighth Circuit. See, e.g., Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143, 146-47 (Iowa 1983) (explaining elements of claim and issue preclusion that may bar litigation of claims); Clarke v. Redeker, 406 F.2d 883, 885 (8th Cir.), cert. denied, 396 U.S. 862 (1969) (damage action for violation of constitutional rights barred by previous action on essentially same underlying facts seeking injunctive relief).

The United States Supreme Court has held that issues actually litigated in a state-court proceeding are entitled to the same preclusive effect in a subsequent federal civil rights action as they would enjoy in the courts of the State that rendered the judgment. Allen

v. McCurry, 449 U.S. 90, 96-97 (1980). In determining what preclusive effect to give a state judgment, the federal court must apply the law of the state court that entered the judgment. Migra v. Warren City Sch. Dist. Bd., 465 U.S. 75, 85-87 (1983); see Comment, Claim Preclusion and Section 1983 Civil Rights Actions: Migra v. Warren City Sch. Dist. Bd., 70 Iowa L. Rev. 287 (1984).

Summary judgment is appropriate only when a party has demonstrated that it is entitled to judgment as a matter of law, with no genuine issues of material fact remaining for trial. Fed. R. Civ. P. 56. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-51 (1986); Matsushita Elec.

Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587-88 (1986). In deciding whether material fact issues are present, the court reviews the summary judgment record in a light most favorable to the party resisting summary judgment. This summary judgment record includes the administrative record as well as all proceedings before the Iowa trial court and Iowa appellate courts. There is no dispute about the substance of the final judgment entered in the Iowa district court, affirmed by Iowa's appellate courts.

PLAINTIFF'S MOTION TO AMEND ORDER

During the hearing on July 1, 1993, the court permitted plaintiff to withdraw her oral motions to dismiss her section 1983 equal protection and due process claims and her section 1983

First Amendment claim against all defendants except defendant Helms. Defendants contend that plaintiff had in fact dismissed those claims with prejudice, with the court's permission, at the hearing on June 3, 1993. The court agrees with defendants' counsel concerning what took place at the June 3 hearing.

But the court has permitted plaintiff to withdraw the motion her counsel made to dismiss with prejudice, because there was no court reporter present during the hearing on June 3 and because there is no showing plaintiff Karen R. Lunde authorized her father, as attorney, to dismiss those claims with prejudice. The court does not now order dismissal of those claims without prejudice. It is not clear the plaintiff, as distinguished from her counsel, knows that the effect

of a dismissal without prejudice of her section 1983 claims would probably be to bar them because of Iowa's two-year statute of limitations. Because the court now grants summary judgment for defendants and against plaintiff on all claims, the court deems moot the issue of whether plaintiff should be permitted to dismiss any of her claims without prejudice. Court permission for dismissal without prejudice at this stage of the proceeding is required. Fed. R. Civ. P. 41(a)(2).

The court will now address in turn the plaintiff's claims of infringement of freedom of speech, violation of her due process and equal protection rights, and sexual discrimination.

PLAINTIFF'S FIRST AMENDMENT CLAIMS

Plaintiff's First Amendment claim

for prospective injunctive relief against all defendants is grounded in a July 29, 1988 letter written to plaintiff by pediatrics professor Dr. Alfred Healy in which he explains the grade she would receive from him for unsatisfactory performance on a rotation he supervised. In essence he stated that her lack of interpersonal skills interfered with her treatment of patients. Plaintiff isolates one sentence in the letter and argues that Dr. Healy gave her a failing grade in the course, causing defendants to take adverse action against her, because of what she had said. Plaintiff additionally contends defendant Helms is liable for damages because he failed to inform the other defendants, when they were considering dismissal of the plaintiff from medical

school, that plaintiff's father had written a letter asserting infringement of her First Amendment rights.

The only difference between plaintiff's First Amendment claims in this lawsuit and the First Amendment claims she asserted in the Iowa judicial proceedings is in the remedies she seeks. The evidence supporting her theory for recovery is not different here than in the state proceedings. The state court addressed the merits of this claim and found for defendants. Claim and issue preclusion bar plaintiff's First Amendment claim.

Moreover, these claims are frivolous. Nothing in this summary judgment record suggests that Healy's evaluation of plaintiff was grounded on the content of her speech. Neither is

there in this record evidence that the other defendants understood Healy's evaluation to be anything other than an evaluation of plaintiff's ability to communicate with other health care professionals. The evidence is that Healy was concerned with plaintiff's lack of communication skills. Healy testified about the importance of effective communication between health care professionals and his concern that "plaintiff was interacting with me in a way that called attention to her and not the rest of the group nor to the subject that was under discussion." He believed that "her performance was not consistent with accepted standards of interactional style between professionals caring for patients." Healy's letter, read in context, addresses

only plaintiff's behavior. Plaintiff raised her federal constitutional claim before the Iowa District Court for Polk County, the Iowa Supreme Court and the United States Supreme Court. The district court on a like record found that Dr. Healy's opinion was not based upon the plaintiff's expression of political views or contrary medical opinions; he was concerned only that her manner of speaking was disruptive of the academic process.

Plaintiff's First Amendment claim is barred by res judicata and also is spurious. The court grants the defendants' motion for summary judgment on the claim that they infringed rights guaranteed her by the First Amendment of the United States Constitution.

PLAINTIFF'S DUE PROCESS AND EQUAL PROTECTION CLAIMS

The gist of the due process and equal protection claims plaintiff asserted in this lawsuit was that plaintiff's registration in medical school was cancelled illegally because she had not received an appropriate evidentiary hearing during the administrative proceedings and was treated differently than other members of her medical school class. The Iowa state trial court in a preliminary ruling held that plaintiff was not entitled to present a full evidentiary hearing before the Iowa Board of Regents, but the court also held that plaintiff would be entitled to present a full factual record before the district court. This resulted in the six-day evidentiary

trial in the Iowa trial court. On appeal, the Iowa Court of Appeals addressed and decided adversely to plaintiff her due process claim. See Court of Appeals decision, 3/24/92, at pp. 4-9.

The Iowa trial court specifically addressed and decided adversely to plaintiff her equal protection claim, noting that a "classification" in which she compared herself with other members of her medical class was unduly restrictive. The court concluded there had been no denial of equal protection.

In plaintiff's resistance to summary judgment, trial brief, and other papers filed in this case she has not presented any factual or legal support for her claims of viola-

tion of due process or deprivation of equal protection rights guaranteed by the United States Constitution. Her claims here are no different than the claims presented in the Iowa administrative and judicial proceedings. Claim preclusion bars her relitigation of those theories in this court.

PLAINTIFF'S SEX DISCRIMINATION CLAIMS

Plaintiff bases her sex discrimination claims on 20 United States Code section 1681 et seq, often referred to as the Title IX education amendments of 1972. She relies on the holding of Franklin v. Gwinnett County Pub. Schs., 117 L.Ed.2d 208, 224 (1992), that concluded a damage remedy could be implied from that Title IX statute prohibiting sex discrimination. In summary, she contends the defendants violated her

rights under that statute and damaged her by dismissing her as a medical student based on their "sex stereo-typical comments about her" in making grading decisions and by treating her differently than men students.

To decide whether the claims here are precluded by the judgment entered in the Iowa trial court and appellate courts, this court must compare the evidence and theory of discrimination in the two cases. The evidence plaintiff would present in this case is essentially the same as that presented in the Iowa district court. The theory that plaintiff was damaged by sexual discrimination because she was not allowed to complete her medical education is not different than the theory in the Iowa trial court and appellate

courts that she was dismissed by reason of sexual discrimination. Here, as in that case, plaintiff contends this is a "mixed motives" civil rights case, invoking the burden-shifting analysis of Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), and its progeny.

The Iowa district court, after considering basically the same evidence as is in this summary judgment record, decided the sex stereotype and sexual discrimination issues adversely to plaintiff's position. The trial court discussed plaintiff's theory, cited Price Waterhouse, but then concluded:

> Based upon its view of the evidence in this case, the court concludes that it makes no difference what analysis is used in making its determination. In any event, [plaintiff's] dismissal from medical

school must be upheld.

> The problem with [plaintiff's] claims of discrimination on the basis of sex is not the legal basis for her claims, but the factual basis. While there is certainly evidence that critical comments were made concerning [plaintiff's] dress and aggressiveness, there is no evidence to support the proposition that a different standard was applied to male and female students, in that aggressiveness was encouraged in male students but not in female students. From all the evidence adduced at trial, it is clear that doctors of all kinds, regardless of race, sex, or other criteria, are expected to be aggressive in carrying [sic] for their patients and treating their medical problems. However, they are also expected to be professional in their dealings with patients, staff and peers. It is clear to the Court that the context of comments in the evaluations concerning [plaintiff's] aggressiveness were made in the sense of professionalism, that is that [plaintiff] was failing to act in a manner appropriate to any and all physicians. Such a criterion is not only not improper, but is laudable and certainly a legitimate goal for the medical school faculty to seek in its graduates.

The Iowa Court of Appeals affirmed that finding and decision. See Court of App-

eals decision, p. 5, n.5.

Plaintiff's sex discrimination claim in this court is barred by issue preclusion. This court recognizes that here plaintiff seeks damages, whereas in the state proceedings in the plaintiff sought reinstatement as a student. But the nucleus of facts underlying that claim for reinstatement and the claim here for damages is the same. The issue whether defendants inappropriately discriminated against plaintiff because she is a woman was addressed and decided adversely to the plaintiff. The elements of issue preclusion are satisfied. Plaintiff has no right to have those facts weighed by a different fact-finder and decided differently. The final decision in this case, made in the Iowa administrative and judicial proceedings, is that plain-

tiff was not evaluated differently from other students or discriminated against because she is a woman.

Plaintiff argues she should not be barred by res judicata from having a trial on her sexual discrimination and First Amendment damage claims because she is entitled to a jury trial on those claims. She relies on Lytle v. Household Mfg., Inc., 494 U.S. 545 (1990).

Lytle is inapposite. There, the court refused to apply collateral estoppel effect to a district court's determinations of issues common to equitable and legal claims, when the court had resolved the equitable claims first by erroneously dismissing the legal claims. Id. at 555-56. Here, the Iowa trial court and appellate courts were not presented with legal issues but decided

the fact issues plaintiff presented in thorough and conclusive decisions on the merits. Moreover, plaintiff has cited no authorities for her theory that her Title IX sexual discrimination claim is triable to a jury rather than to the court in a bench trial.

This case is similar to Clarke v. Redeker, 406 F.2d at 884, where the plaintiff first sought an injunction against having to pay a higher nonresident tuition, then sought damages for having to pay the higher tuition in a subsequent lawsuit. The court held the second action, seeking damages, was barred by res judicata. Id. at 885. Plaintiff has no persuasive legal authority for avoiding the preclusive effect of the state court judgment that found her termination from medical school did

not violate her rights under applicable statutes and provisions of the United States Constitution. Sound judicial administration and principles of full faith and credit and federalism support this court giving preclusive effect to the decisions of the Iowa courts. Cf. University of Tennessee v. Elliott, 478 U.S. 788, 798-99 (1986) (giving preclusive effect to fact-finding of a state agency when it acted in a judicial capacity, resolved disputed issues of fact, and provided the parties adequate opportunity to litigate).

Finally, this court returns to a theme underlying its ruling denying preliminary injunctive relief on August 31, 1989. Important state interests are implicated in allowing professional university administrators and faculty per-

sons to determine what students are meeting academic standards and, more specifically, what medical students should be retained in programs at Iowa's Regent's universities. Plaintiff has had full and fair hearings and a complete evidentiary proceeding addressing all complaints about her dismissal from the University of Iowa College of Medicine. She is entitled to no further trial on her damage claims.

The clerk of court shall enter summary judgment in favor of defendants and against plaintiff, dismissing her claims and assessing costs to plaintiff.

IT IS SO ORDERED.

Dated this 2nd day of July, 1993.

/s/ Charles R. Wolle, Judge
CHARLES R. WOLLE, JUDGE
UNITED STATES DISTRICT COURT